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Almawave S.r.l. and Almawave USA, Inc.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LOOP AI LABS, INC., a Delaware
 corporation,

Plaintiffs,

v.

ANNA GATTI, an individual,
 ALMAVIVA S.p.A., an Italian corporation,
 ALMAWAVE S.r.l., an Italian corporation,
 ALMAWAVE USA, Inc., a California
 corporation, IQSYSTEM LLC, a California
 limited liability company, IQSYSTEM Inc., a
 Delaware corporation,

Defendants.

CASE NO.: 3:15-cv-00798-HSG (DMR)

**STIPULATED PROTECTIVE ORDER
 FOR LITIGATION INVOLVING
 PATENTS, HIGHLY SENSITIVE
 CONFIDENTIAL INFORMATION
 AND/OR TRADE SECRETS**

Action Filed: February 20, 2015

Trial Date: July 11, 2016

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1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of confidential,
 3 proprietary, or private information for which special protection from public disclosure and from
 4 use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the
 5 parties hereby stipulate to and petition the court to enter the following Stipulated Protective
 6 Order. The parties acknowledge that this Order does not confer blanket protections on all
 7 disclosures or responses to discovery and that the protection it affords from public disclosure and
 8 use extends only to the limited information or items that are entitled to confidential treatment
 9 under the applicable legal principles. The parties further acknowledge, as set forth in Section
 10 14.4, below, that this Stipulated Protective Order does not entitle them to file confidential
 11 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed
 12 and the standards that will be applied when a party seeks permission from the court to file
 13 material under seal.

14 2. DEFINITIONS

15 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
 16 information or items under this Order.

17 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is
 18 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
 19 of Civil Procedure 26(c).

20 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
 21 well as their support staff).

22 2.4 Designated House Counsel: House Counsel who seek access to "HIGHLY
 23 CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE
 24 CODE" information in this matter.

25 2.5 Designating Party: a Party or Non-Party that designates information or items that
 26 that are produced by any Party or Non-Party in disclosures or in responses to discovery as
 27 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or
 28 "HIGHLY CONFIDENTIAL – SOURCE CODE".

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1 2.6 Disclosure or Discovery Material: all items or information, regardless of the
2 medium or manner in which it is generated, stored, or maintained (including, among other things,
3 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
4 responses to discovery in this matter.

5 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
6 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or
7 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's
8 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party
9 or of a Party's competitor.

10 2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or
11 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another
12 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
13 less restrictive means.

14 2.9 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items:
15 extremely sensitive "Confidential Information or Items" representing computer code and
16 associated comments and revision histories, formulas, engineering specifications, or schematics
17 that define or otherwise describe in detail the algorithms or structure of software or hardware
18 designs, disclosure of which to another Party or Non-Party would create a substantial risk of
19 serious harm that could not be avoided by less restrictive means.

20 2.10 House Counsel: attorneys who are employees of a party to this action. House
21 Counsel does not include Outside Counsel of Record or any other outside counsel.

22 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal
23 entity not named as a Party to this action.

24 2.12 Outside Counsel of Record: attorneys who are not employees of a party to this
25 action but are retained to represent or advise a party to this action and have appeared in this
26 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
27 that party.

28 2.13 Party: any party to this action, including all of its officers, directors, employees,

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1 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
3 Material in this action.

4 2.15 Professional Vendors: persons or entities that provide litigation support services
5 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
6 organizing, storing, or retrieving data in any form or medium) and their employees and
7 subcontractors.

8 2.16 Protected Material: any Disclosure or Discovery Material that is designated as
9 "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or as
10 "HIGHLY CONFIDENTIAL – SOURCE CODE."

11 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a
12 Producing Party.

13 3. SCOPE

14 The protections conferred by this Stipulation and Order cover not only Protected Material
15 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
16 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
17 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
18 However, the protections conferred by this Stipulation and Order do not cover the following
19 information: (a) any information that is in the public domain at the time of disclosure to a
20 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
21 a result of publication not involving a violation of this Order, including becoming part of the
22 public record through trial or otherwise; and (b) any information known to the Receiving Party
23 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
24 obtained the information lawfully and under no obligation of confidentiality to the Designating
25 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

26 4. DURATION

27 Even after final disposition of this litigation, the confidentiality obligations imposed by
28 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court

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1 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
 2 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
 3 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
 4 action, including the time limits for filing any motions or applications for extension of time
 5 pursuant to applicable law.

6 5. DESIGNATING PROTECTED MATERIAL

7 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
 8 or Non-Party that designates information or items for protection under this Order must take care
 9 to limit any such designation to specific material that qualifies under the appropriate standards.
 10 To the extent it is practical to do so, the Designating Party must designate for protection only
 11 those parts of material, documents, items, or oral or written communications that qualify – so
 12 that other portions of the material, documents, items, or communications for which protection is
 13 not warranted are not swept unjustifiably within the ambit of this Order.

14 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
 15 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
 16 unnecessarily encumber or retard the case development process or to impose unnecessary
 17 expenses and burdens on other parties) expose the Designating Party to sanctions.

18 If it comes to a Designating Party's attention that information or items that it designated
 19 for protection do not qualify for protection at all or do not qualify for the level of protection
 20 initially asserted, that Designating Party must promptly notify all other parties that it is
 21 withdrawing the mistaken designation.

22 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
 23 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
 24 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
 25 designated before the material is disclosed or produced.

26 Designation in conformity with this Order requires:

27 (a) for information in documentary form (e.g., paper or electronic documents, but
 28 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing

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1 Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
 2 EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" to each page that contains
 3 protected material. If only a portion or portions of the material on a page qualifies for protection,
 4 the Producing Party also must clearly identify the protected portion(s) (e.g., by making
 5 appropriate markings in the margins) and must specify, for each portion, the level of protection
 6 being asserted.

7 A Party may designate Disclosure or Discovery Material produced by another Party or a
 8 Non-Party by making the Designation by letter to all Parties and the Non-Party (if applicable),
 9 specifying the production numbers of the documents deemed to be "CONFIDENTIAL" or
 10 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL
 11 – SOURCE CODE", within 15 business days of the date the material is received in the litigation
 12 by the Designating Party.

13 A Party or Non-Party that makes original documents or materials available for inspection
 14 need not designate them for protection until after the inspecting Party has indicated which
 15 material it would like copied and produced. During the inspection and before the designation, all
 16 of the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL –
 17 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants
 18 copied and produced, the Producing Party must determine which documents, or portions thereof,
 19 qualify for protection under this Order. Then, before producing the specified documents, the
 20 Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY
 21 CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE
 22 CODE) to each page that contains Protected Material. If only a portion or portions of the
 23 material on a page qualifies for protection, the Producing Party also must clearly identify the
 24 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for
 25 each portion, the level of protection being asserted.

26 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
 27 Designating Party identify on the record, before the close of the deposition, hearing, or other
 28 proceeding, all protected testimony and specify the level of protection being asserted. When it is

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1 impractical to identify separately each portion of testimony that is entitled to protection and it
 2 appears that substantial portions of the testimony may qualify for protection, the Designating
 3 Party may invoke on the record (before the deposition, hearing, or other proceeding is
 4 concluded) a right to have up to 21 days to identify the specific portions of the testimony as to
 5 which protection is sought and to specify the level of protection being asserted. Only those
 6 portions of the testimony that are appropriately designated for protection within the 21 days shall
 7 be covered by the provisions of this Stipulated Protective Order. Alternatively, a Designating
 8 Party may specify, at the deposition or up to 21 days afterwards if that period is properly
 9 invoked, that the entire transcript shall be treated as "CONFIDENTIAL" or "HIGHLY
 10 CONFIDENTIAL – ATTORNEYS' EYES ONLY."

11 Parties shall give the other parties notice if they reasonably expect a deposition, hearing
 12 or other proceeding to include Protected Material so that the other parties can ensure that only
 13 authorized individuals who have signed the "Acknowledgment and Agreement to Be Bound"
 14 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
 15 shall not in any way affect its designation as "CONFIDENTIAL" or "HIGHLY
 16 CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE
 17 CODE."

18 Transcripts containing Protected Material shall have an obvious legend on the title page
 19 that the transcript contains Protected Material, and the title page shall be followed by a list of all
 20 pages (including line numbers as appropriate) that have been designated as Protected Material
 21 and the level of protection being asserted by the Designating Party. The Designating Party shall
 22 inform the court reporter of these requirements. Any transcript that is prepared before the
 23 expiration of a 21-day period for designation shall be treated during that period as if it had been
 24 designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" in its entirety unless
 25 otherwise agreed. After the expiration of that period, the transcript shall be treated only as
 26 actually designated.

27 (c) for information produced in some form other than documentary and for any
 28 other tangible items, that the Producing Party affix in a prominent place on the exterior of the

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1 container or containers in which the information or item is stored the legend "CONFIDENTIAL"
 2 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY
 3 CONFIDENTIAL – SOURCE CODE". If only a portion or portions of the information or item
 4 warrant protection, the Producing Party, to the extent practicable, shall identify the protected
 5 portion(s) and specify the level of protection being asserted.

6 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 7 designate qualified information or items does not, standing alone, waive the Designating Party's
 8 right to secure protection under this Order for such material. Upon timely correction of a
 9 designation, the Receiving Party must make reasonable efforts to assure that the material is
 10 treated in accordance with the provisions of this Order.

11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
 13 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
 14 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
 15 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
 16 challenge a confidentiality designation by electing not to mount a challenge promptly after the
 17 original designation is disclosed.

18 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
 19 process by providing written notice of each designation it is challenging and describing the basis
 20 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
 21 notice must recite that the challenge to confidentiality is being made in accordance with this
 22 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
 23 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
 24 forms of communication are not sufficient) within 14 days of the date of service of notice. In
 25 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
 26 designation was not proper and must give the Designating Party an opportunity to review the
 27 designated material, to reconsider the circumstances, and, if no change in designation is offered,
 28 to explain the basis for the chosen designation. A Challenging Party may proceed to the next

1 stage of the challenge process only if it has engaged in this meet and confer process first or
 2 establishes that the Designating Party is unwilling to participate in the meet and confer process in
 3 a timely manner.

4 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
 5 intervention, the Parties shall file a joint letter brief in accordance with the procedures set forth in
 6 Hon. Donna M. Ryu's Standing Order, dated August 6, 2014, regarding civil discovery within 5
 7 days of the parties agreeing that the meet and confer process will not resolve their dispute. Any
 8 joint letter brief filed pursuant to this provision must include an attestation affirming that the
 9 movant has complied with the meet and confer requirements imposed by the preceding
 10 paragraph.

11 The burden of persuasion in any such challenge proceeding shall be on the Designating
 12 Party.¹ Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
 13 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
 14 sanctions. All parties shall continue to afford the material in question the level of protection to
 15 which it is entitled under the Producing Party's designation until the court rules on the challenge.

16 7. ACCESS TO AND USE OF PROTECTED MATERIAL

17 7.1 Basic Principles. Unless otherwise permitted by the Court, a Receiving Party may
 18 use Protected Material that is disclosed or produced by another Party or by a Non-Party in
 19 connection with this case only for prosecuting, defending, or attempting to settle this litigation.
 20 Such Protected Material may be disclosed only to the categories of persons and under the
 21 conditions described in this Order. When the litigation has been terminated, a Receiving Party
 22 must comply with the provisions of section 15 below (FINAL DISPOSITION).

23 Protected Material must be stored and maintained by a Receiving Party at a location and
 24
 25

26 ¹ The burden is shifted to the Challenging Party after two (2) unsuccessful (in whole or in part)
 27 challenges are made by the Challenging Party. The burden of persuasion remains on the
 28 Designating Party.

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1 in a secure manner² that ensures that access is limited to the persons authorized under this Order.

2 The Parties and their Outside Counsel of Record are prohibited from emailing any
3 Protected Material designated under one of the ATTORNEY'S EYES ONLY confidentiality
4 designations permitted under this Order, and must use alternative means to electronically transfer
5 Disclosure or Discovery so designated under this Order (e.g. FTP sites, electronic delivery or
6 document sites, electronic document management systems, or any other electronic system other
7 than email that permits the logging and easy deletion from one place of the Protected Materials,
8 and that does not disseminate the Protected Materials in a manner that (like electronic emails)
9 may be difficult to trace, log, and destroy following the conclusion of this action, in accordance
10 with the terms of this Order).

11 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
12 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
13 disclose any information or item designated "CONFIDENTIAL" only to:

14 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
15 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
16 information for this litigation and who have signed the "Acknowledgment and Agreement to Be
17 Bound" that is attached hereto as Exhibit A;

18 (b) the officers, directors, and employees (including House Counsel) of the
19 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
20 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

21 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
22 reasonably necessary for this litigation and who have signed the "Acknowledgment and
23 Agreement to Be Bound" (Exhibit A);

24 (d) the court and its personnel;

25 (e) court reporters and their staff, professional jury or trial consultants, and

26
27 ² Receiving Party must store any electronic Protected Material in password-protected form if
28 received in password-protected form.

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1 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who
 2 have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

3 (f) during their depositions, witnesses in the action to whom disclosure is
 4 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
 5 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
 6 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
 7 separately bound by the court reporter and may not be disclosed to anyone except as permitted
 8 under this Stipulated Protective Order.

9 (g) the author or recipient of a document containing the information or a custodian or
 10 other person who otherwise possessed or knew the information.

11 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" and
 12 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items. Unless otherwise
 13 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
 14 disclose any information or item designated "HIGHLY CONFIDENTIAL – ATTORNEYS'
 15 EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" only to:

16 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
 17 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
 18 information for this litigation and who have signed the "Acknowledgment and Agreement to Be
 19 Bound" that is attached hereto as Exhibit A;

20 (b) Designated House Counsel of the Receiving Party (1) who has no involvement
 21 in competitive decision-making, (2) to whom disclosure is reasonably necessary for this
 22 litigation, (3) who has signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A),
 23 and (4) as to whom the procedures set forth in paragraph 7.4(a)(1), below, have been followed;³

24 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary
 25 for this litigation, (2) who have signed the "Acknowledgment and Agreement to Be Bound"

26
 27 ³ This Order contemplates that Designated House Counsel shall not have access to information
 28 or items designated "HIGHLY CONFIDENTIAL – SOURCE CODE."

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(Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed;

(d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants and their staff and any mock jurors retained by them to participate in a mock exercise of this matter, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A); and

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

7.4 Procedures for Approving or Objecting to Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items to Designated House Counsel or Experts.

(a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to Designated House Counsel any information or item that has been designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" pursuant to paragraph 7.3(b) first must make a written request to the Designating Party that (1) sets forth the full name of the Designated House Counsel and the city and state of his or her residence, and (2) describes the Designated House Counsel's current and reasonably foreseeable future primary job duties and responsibilities in sufficient detail to determine if House Counsel is involved, or may become involved, in any competitive decision-making.

(a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" pursuant to paragraph 7.3(c) first must make a written request to the Designating Party that (1) identifies the general categories of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or

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1 her primary residence, (3) attaches a copy of the Expert's current resume, (4) identifies the
 2 Expert's current employer(s), (5) identifies each person or entity from whom the Expert has
 3 received compensation or funding for work in his or her areas of expertise or to whom the expert
 4 has provided professional services, including in connection with a litigation, at any time during
 5 the preceding five years,⁴ and (6) identifies (by name and number of the case, filing date, and
 6 location of court) any litigation in connection with which the Expert has offered expert
 7 testimony, including through a declaration, report, or testimony at a deposition or trial, during the
 8 preceding five years. However, "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
 9 or "HIGHLY CONFIDENTIAL – SOURCE CODE" may be disclosed to an Expert without
 10 disclosure of the identity of the Expert so long as the Expert is not a current officer, director, or
 11 employee of a competitor of a Party or anticipated to become one.

12 (b) A Party that makes a request and provides the information specified in the
 13 preceding respective paragraphs may disclose the subject Protected Material to the identified
 14 Designated House Counsel or Expert unless, within 14 days of delivering the request, the Party
 15 receives a written objection from the Designating Party. Any such objection must set forth in
 16 detail the grounds on which it is based.

17 (c) A Party that receives a timely written objection must meet and confer with the
 18 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
 19 agreement within seven days of the written objection. If no agreement is reached, the Party
 20 seeking to make the disclosure to Designated House Counsel or the Expert may file a motion as
 21 provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)
 22 seeking permission from the court to do so. Any such motion must describe the circumstances
 23 with specificity, set forth in detail the reasons why the disclosure to Designated House Counsel
 24 or the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail,

25
 26 ⁴ If the Expert believes any of this information is subject to a confidentiality obligation to a third-
 27 party, then the Expert should provide whatever information the Expert believes can be disclosed
 28 without violating any confidentiality agreements, and the Party seeking to disclose to the Expert
 shall be available to meet and confer with the Designating Party regarding any such engagement.

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1 and suggest any additional means that could be used to reduce that risk. In addition, any such
 2 motion must be accompanied by a competent declaration describing the parties' efforts to resolve
 3 the matter by agreement (i.e., the extent and the content of the meet and confer discussions) and
 4 setting forth the reasons advanced by the Designating Party for its refusal to approve the
 5 disclosure.

6 In any such proceeding, the Party opposing disclosure to Designated House
 7 Counsel or the Expert shall bear the burden of proving that the risk of harm that the disclosure
 8 would entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose
 9 the Protected Material to its Designated House Counsel or Expert.

10 8. SOURCE CODE

11 (a) To the extent production of source code becomes necessary in this case, a
 12 Producing Party may designate source code as "HIGHLY CONFIDENTIAL - SOURCE CODE"
 13 if it comprises or includes confidential, proprietary or trade secret source code.

14 (b) Protected Material designated as "HIGHLY CONFIDENTIAL –
 15 SOURCE CODE" shall be subject to all of the protections afforded to "HIGHLY
 16 CONFIDENTIAL – ATTORNEYS' EYES ONLY" information including the Prosecution Bar
 17 set forth in Paragraph 8, and may be disclosed only to the individuals to whom "HIGHLY
 18 CONFIDENTIAL – ATTORNEYS' EYES ONLY" information may be disclosed, as set forth in
 19 Paragraphs 7.3 and 7.4, with the exception of Designated House Counsel.⁵

20 (c) Any source code produced in discovery shall be made available for
 21 inspection in a format through which it could be reasonably reviewed and searched during
 22 normal business hours or other mutually agreeable times at a location that is reasonably
 23 convenient for the Receiving Party and any experts to whom the source code may be disclosed.
 24 This alternative may be appropriate if the Producing Party and/or its counsel are located in a
 25 different jurisdiction than counsel and/or experts for the Receiving Party. The source code shall

26
 27 ⁵ Except that House Counsel may access derivative materials including "HIGHLY
 28 CONFIDENTIAL - SOURCE CODE" information, such as exhibits to motions or expert reports,

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1 be made available for inspection on a secured computer in a secured room without Internet
2 access or network access to other computers, and the Receiving Party shall not copy, remove, or
3 otherwise transfer any portion of the source code onto any recordable media or recordable
4 device. The Producing Party may visually monitor the activities of the Receiving Party's
5 representatives during any source code review, but only to ensure that there is no unauthorized
6 recording, copying, or transmission of the source code.

7 (d) The Receiving Party may request paper copies of limited portions of
8 source code that are reasonably necessary for the preparation of court filings, pleadings, expert
9 reports, or other papers, or for deposition or trial, but shall not request paper copies for the
10 purposes of reviewing the source code other than electronically as set forth in paragraph (c) in
11 the first instance. The Producing Party shall provide all such source code in paper form including
12 bates numbers and the label "HIGHLY CONFIDENTIAL - SOURCE CODE." The Producing
13 Party may challenge the amount of source code requested in hard copy form pursuant to the
14 dispute resolution procedure and timeframes set forth in Paragraph 6 whereby the Producing
15 Party is the "Challenging Party" and the Receiving Party is the "Designating Party" for purposes
16 of dispute resolution.

17 (e) The Receiving Party shall maintain a record of any individual who has
18 inspected any portion of the source code in electronic or paper form. The Receiving Party shall
19 maintain all paper copies of any printed portions of the source code in a secured, locked area.
20 The Receiving Party shall not create any electronic or other images of the paper copies and shall
21 not convert any of the information contained in the paper copies into any electronic format. The
22 Receiving Party shall only make additional paper copies if such additional copies are (1)
23 necessary to prepare court filings, pleadings, or other papers (including a testifying expert's
24 expert report), (2) necessary for deposition, or (3) otherwise necessary for the preparation of its
25 case. Any paper copies used during a deposition shall be retrieved by the Producing Party at the
26 end of each day and must not be given to or left with a court reporter or any other unauthorized
27 individual.

28 (f) Seven (7) days before any Receiving Party files with the Court any

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document or serves an expert report that includes "HIGHLY CONFIDENTIAL – SOURCE CODE" the Receiving Party must notify in writing the Producing Party that such filing or service of expert report will occur. The Producing Party may then challenge, in writing, the use of "HIGHLY CONFIDENTIAL – SOURCE CODE" in such filing or expert report. The parties are to use the dispute resolution procedures of Paragraph 6 to resolve the dispute. No challenged document may be filed or expert report served until such dispute is resolved. The Producing Party is the "Challenging Party" and the Receiving Party is the "Designating Party" for purposes of dispute resolution.

9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.⁶

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as

⁶ The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued.

1 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
 2 “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination by the court from
 3 which the subpoena or order issued, unless the Party has obtained the Designating Party’s
 4 permission. The Designating Party shall bear the burden and expense of seeking protection in
 5 that court of its confidential material – and nothing in these provisions should be construed as
 6 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from
 7 another court.

8 10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
 9 LITIGATION

10 (a) The terms of this Order are applicable to information produced by a Non-
 11 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
 12 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”. Such
 13 information produced by Non-Parties in connection with this litigation is protected by the
 14 remedies and relief provided by this Order. Nothing in these provisions should be construed as
 15 prohibiting a Non-Party from seeking additional protections.

16 (b) In the event that a Party is required, by a valid discovery request, to
 17 produce a Non-Party’s confidential information in its possession, and the Party is subject to an
 18 agreement with the Non-Party not to produce the Non-Party’s confidential information, then the
 19 Party shall:

20 1. promptly notify in writing the Requesting Party and the Non-Party
 21 that some or all of the information requested is subject to a confidentiality agreement with a
 22 Non-Party;

23 2. promptly provide the Non-Party with a copy of the Stipulated
 24 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
 25 description of the information requested; and

26 3. make the information requested available for inspection by the
 27 Non-Party.

28 (c) If the Non-Party fails to object or seek a protective order from this court

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1 within 14 days of receiving the notice and accompanying information, the Receiving Party may
 2 produce the Non-Party's confidential information responsive to the discovery request. If the
 3 Non-Party timely seeks a protective order, the Receiving Party shall not produce any information
 4 in its possession or control that is subject to the confidentiality agreement with the Non-Party
 5 before a determination by the court.⁷ Absent a court order to the contrary, the Non-Party shall
 6 bear the burden and expense of seeking protection in this court of its Protected Material.

7 11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

8 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
 9 Material to any person or in any circumstance not authorized under this Stipulated Protective
 10 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
 11 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
 12 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
 13 made of all the terms of this Order, and (d) request such person or persons to execute the
 14 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

15 12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED 16 MATERIAL

17 When a Producing Party gives notice to Receiving Parties that certain inadvertently
 18 produced material is subject to a claim of privilege or other protection, the obligations of the
 19 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
 20 provision is not intended to modify whatever procedure may be established in an e-discovery
 21 order that provides for production without prior privilege review. Pursuant to Federal Rule of
 22 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
 23 communication or information covered by the attorney-client privilege or work product
 24 protection, the parties may incorporate their agreement in the stipulated protective order

25 _____
 26 ⁷ The purpose of this provision is to alert the interested parties to the existence of confidentiality
 27 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality
 28 interests in this court.

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1 submitted to the court.

2 13. MISCELLANEOUS

3 13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
4 seek its modification by the court in the future.

5 13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
6 Order no Party waives any right it otherwise would have to object to disclosing or producing any
7 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
8 no Party waives any right to object on any ground to use in evidence of any of the material
9 covered by this Protective Order.

10 13.3 Export Control. Disclosure of Protected Material shall be subject to all applicable
11 laws and regulations relating to the export of technical data contained in such Protected Material,
12 including the release of such technical data to foreign persons or nationals in the United States or
13 elsewhere. The Producing Party shall be responsible for identifying any such controlled technical
14 data, and the Receiving Party shall take measures necessary to ensure compliance.

15 13.4 Filing Protected Material. Without written permission from the Designating Party
16 or a court order secured after appropriate notice to all interested persons, a Party may not file in
17 the public record in this action any Protected Material. A Party that seeks to file under seal any
18 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be
19 filed under seal pursuant to a court order authorizing the sealing of the specific Protected
20 Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a
21 request establishing that the Protected Material at issue is privileged, protectable as a trade
22 secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file
23 Protected Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then
24 the Receiving Party may file the Protected Material in the public record pursuant to Civil Local
25 Rule 79-5(e)(2) unless otherwise instructed by the court.

26 14. FINAL DISPOSITION

27 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
28 Receiving Party must return all Protected Material to the Producing Party or destroy such

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1 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
 2 compilations, summaries, and any other format reproducing or capturing any of the Protected
 3 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
 4 submit a written certification to the Producing Party (and, if not the same person or entity, to the
 5 Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all
 6 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
 7 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
 8 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
 9 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
 10 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
 11 product, and consultant and expert work product, even if such materials contain Protected
 12 Material. Any such archival copies that contain or constitute Protected Material remain subject to
 13 this Protective Order as set forth in Section 4 (DURATION).

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

VENABLE LLP

Dated: 9/28/15

/s/

Counsel for defendants Almaviva S.p.A,
Almawave S.r.l. and Almawave USA, Inc.

LAW OFFICES OF JANET BRAYER

Dated:

/s/

Counsel for defendant IQSystem, Inc.

LOW, BALL & LYNCH

Dated: 9/28/15

/s/

Counsel for defendant Anna Gatti and IQ Systems,
LLC

HEALY LLC

FREITAS ANGELL & WEINBERG LLP

Dated: 10/1/2015

/s/

by Valeria C. Healy

Counsel for plaintiff Loop AI Labs, Inc.

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1 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
 2 compilations, summaries, and any other format reproducing or capturing any of the Protected
 3 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
 4 submit a written certification to the Producing Party (and, if not the same person or entity, to the
 5 Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all
 6 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
 7 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
 8 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
 9 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
 10 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
 11 product, and consultant and expert work product, even if such materials contain Protected
 12 Material. Any such archival copies that contain or constitute Protected Material remain subject to
 13 this Protective Order as set forth in Section 4 (DURATION).

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated:

9/28/15

VENABLE LLP

Counsel for defendants Almayiva S.p.A.,
Almaywave S.r.l. and Almaywave USA, Inc.

LAW OFFICES OF JANET BRAYER

Dated:

9-29-15

/s/

Counsel for defendant IQSystem, Inc.

LOW, BALL & LYNCH

Dated:

/s/

Counsel for defendant Anna Gatti and IQ Systems,
LLCHEALY LLC
FREITAS ANGELL & WEINBERG LLP

Dated: 10/1/2015

/s/

Counsel for plaintiff Loop AI Labs, Inc.

by Valeria C. Healy

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10150466-v2 Healy LLC

STIPULATED PROTECTIVE ORDER
CASE NO. 3:15-cv-00798-HSG

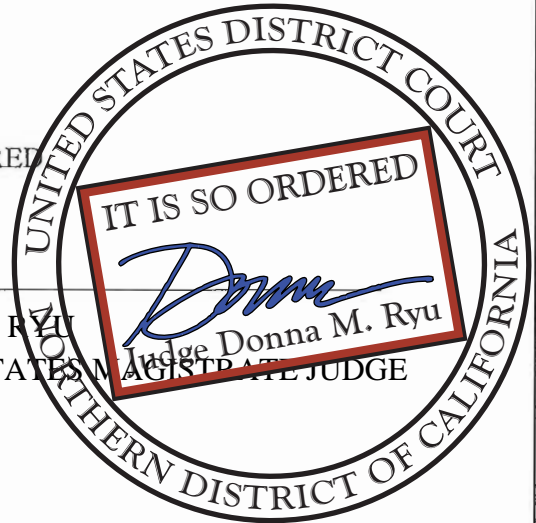
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PURSUANT TO STIPULATION, IT IS SO ORDERED

DATED: Oct. 1, 2015

DONNA M. RYU
UNITED STATES MAGISTRATE JUDGE



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EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
 [print or type full address], declare under penalty of perjury that I have read in its entirety and
 understand the Stipulated Protective Order that was issued by the United States District Court for
 the Northern District of California on [date] in the case of *Loop AI Labs, Inc. v. Gatti et al.* Case
 No. 15-cv-00798 HSG. I agree to comply with and to be bound by all the terms of this Stipulated
 Protective Order and I understand and acknowledge that failure to so comply could expose me to
 sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose
 in any manner any information or item that is subject to this Stipulated Protective Order to any
 person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Northern District of California for the purpose of enforcing the terms of this Stipulated
 Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and telephone
 number] as my California agent for service of process in connection with this action or any
 proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

[printed name]

Signature: _____

[signature]

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